

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 13-12094-reg

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5 In the Matter of:

6 TUCCI EQUIPMENT RENTAL CORP.,

7 Debtor.

8 - - - - - x

9 Case No. 13-12180-reg

10 In the Matter of:

11 ANTHONY R. MARTUCCI,

12 Debtor.

13 - - - - - x

14

15 United States Bankruptcy Court

16 One Bowling Green

17 New York, New York

18

19 September 12, 2013

20 10:14 a.m.

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22 B E F O R E :

23 HON ROBERT E. GERBER

24 U.S. BANKRUPTCY JUDGE

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1 Doc. #2 Case Conference

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3 Doc. #22 Case Conference

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25 Transcribed by: Sherri L. Breach, CERT*D-397

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BY: M. DAVID COMETTI, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Tucci Equipment rental.

3 (Pause)

4 THE COURT: Okay. I remember some of you by face,
5 but I have to apologize that I don't remember names. I need
6 appearances.

7 MS. PERSKIE: Nicole Perskie from the Law Office
8 of Robert Lewis on behalf of the debtor, Anthony Martucci,
9 who is to my left.

10 THE COURT: Okay. And that was Perskie?

11 MS. PERSKIE: Correct.

12 THE COURT: Thank you.

13 MS. SILVESTRO: Jennifer Silvestro from Lazer,
14 Aptheker, Rosella & Yedid, P.C. for Capital One, secured
15 creditor.

16 MR. DRISCOLL: Good morning, Your Honor. Mike
17 Driscoll for the U.S. Trustee.

18 THE COURT: Thank you, Mr. Driscoll.

19 MR. KASS: Zachery Kass from the New York City Law
20 Department on behalf of the City of New York.

21 THE COURT: Thank you, Mr. Kass.

22 MR. LEONARD: Robert Leonard, Torre, Lentz,
23 Gamell, Gary & Rittmaster, LLP, attorneys for the surety
24 which is First National Insurance Company of America, a
25 member of the Liberty Insurance Group.

1 THE COURT: Okay. Thank you, Mr. Leonard.

2 MR. COMETTI: Mario Cometti from Tibbetts Keating
3 & Butler on behalf of Michelle Martucci, the former spouse
4 of the debtor.

5 THE COURT: Did you say Cometti?

6 MR. COMETTI: That's correct, Your Honor, Cometti.

7 THE COURT: Thank you.

8 Okay. Everybody have seats except Ms. Perskie. I
9 would like to --

10 MR. LEONARD: Excuse me, Your Honor, if I may just
11 introduce -- my client is here, also, Michael Bramhall (ph)
12 from Liberty.

13 THE COURT: Okay. Thank you. And that was Mr.
14 Leonard, right?

15 MR. LEONARD: Yes, Your Honor.

16 THE COURT: Okay. Thank you.

17 MS. PERSKIE: Your Honor --

18 THE COURT: Yes. Come to the main mic if you
19 would, please, Ms. Perskie.

20 MS. PERSKIE: I just wanted to mention first this
21 is the Tucci Equipment Rental matter. I don't know if
22 you're planning to appear on the personal matter, which is
23 next on the calendar.

24 MR. COMETTI: Yes.

25 MS. PERSKIE: Okay. I just wanted to clarify

1 that.

2 Today is the second status conference we're having
3 on behalf of Tucci Equipment Rental Corporation and we have
4 finally received funds. The debtor received a check for
5 \$59,000 for payment on a job that was performed prior to
6 bankruptcy. That is currently being held in his DIP
7 account.

8 We're having some issue -- somewhat of an issue
9 coming up with the budget. The 59,000 that came in, we have
10 past due wages in the amount of \$39,252. That would be --

11 THE COURT: Which is to workers on various jobs on
12 behalf of your client?

13 MS. PERSKIE: Correct, which were performed with
14 -- within 180 days of the bankruptcy filing and that would
15 be compensating Mr. Martucci 10,000 out of the approximately
16 18,000 he's owed. If we were to pay the past due wages,
17 insurance is \$12,000. We've pretty much spent all of the
18 money the debtor has at that point.

19 THE COURT: Now is that a liability insurance,
20 casualty insurance, what kind?

21 MR. MARTUCCI: Liability -- general liability.

22 MS. PERSKIE: We've been in discussions --

23 THE COURT: Pause, please. How much of the wages
24 due are to your rank and file as contrasted to your client's
25 principal?

1 MS. PERSKIE: Ten-thousand is to the client's
2 principal. The other 29,252 are to various other employees.

3 THE COURT: So that's about 29,000 to what I
4 called rank and file?

5 MS. PERSKIE: Correct.

6 THE COURT: Uh-huh. Keep going.

7 MS. PERSKIE: The issue we've had with this matter
8 is I had posted an operating report, which was a to date
9 operating report just to kind of update everybody on where
10 we're at. My client's owed approximately \$1.2 million by
11 the city for various work that's been performed. All but
12 two jobs have been billed for already. But we have not
13 received funds on the other jobs. And determining the
14 status of this money has been next to impossible. I don't
15 know if there's a way for Your Honor to order something
16 where I could serve it upon, you know, the various parties:
17 The housing preserve, HPD, New York City of Parks, the City
18 of Yonkers. We're running --

19 THE COURT: Have you talked to Mr. Kass about
20 trying to get that information without me ordering it?

21 MS. PERSKIE: I have not, Your Honor.

22 THE COURT: Well --

23 MS. PERSKIE: I will discuss it --

24 THE COURT: -- he's the lawyer for the city. I
25 would assume those agencies are under his wing or he would

1 know who to talk to. I'll -- I'll give you a chance to
2 response, Mr. Kass, but that's --

3 MR. KASS: We -- we do represent those agencies.

4 THE COURT: Okay. That's a question that occurs
5 to a judge, Ms. Perskie. You know, how -- how -- whether
6 you might be able to advance this case by getting on the
7 phone with these people.

8 MS. PERSKIE: Correct. I've -- I've made several
9 phone calls. I have not spoken with Mr. Kass. I know Your
10 Honor had put aside time for us to talk today and I was
11 hoping that we could maybe get -- get status on some of the
12 payments that I had --

13 THE COURT: Okay. Let -- let me just tell you
14 something that I told a lawyer in another case yesterday
15 where a lawyer was kind of in your shoes and was trying to
16 deal with the IRS, and maybe there's no bureaucracy worse in
17 the country than the IRS, but maybe the city agencies come
18 into second place.

19 My experience has taught me that when you talk to
20 the lawyers for these folks, the U.S. Attorney's Office, the
21 Corporation Counsel's office, the A.G.'s office, you get
22 much more thoughtful and quick responses than you deal with
23 the bureaucratic agencies themselves. I asked, and either
24 because of the bully pulpit (sic) or because he didn't want
25 to annoy me or because it's the natural tendency of lawyers

1 to ask responsibly, when I said, can you deal with the U.S.
2 Attorney's Office instead of the IRS, the A.U.S.A., the
3 assistant U.S. attorney who showed up that day said, of
4 course.

5 Mr. Kass -- I haven't put Mr. Kass on the spot
6 yet, but I will in a moment, and I would ask that you
7 communicate with him to try to resolve as much as you guys
8 can consensually without making me order things. And that's
9 with a full reservation of rights if you later agree to
10 disagree or if he can't help you.

11 It's at least possible that your client's survival
12 will depend on collecting receivables, some of which may or
13 certainly will be disputed and some of which may or may not
14 be undisputed. But your tasks, it would seem to me, is to
15 try to move your cases as quickly as you can with as little
16 in the way of administrative expenses as you can, and it
17 seems to me -- I -- that the best way to do that is to pick
18 up the phone or to chat with people in person.

19 MS. PERSKIE: Your Honor, I have to be perfectly
20 honest. When we chatted last time I was very discouraged by
21 the City's response to a debtor being in bankruptcy.

22 THE COURT: Well, then, if you've tried and failed
23 what I've suggested, then you've tried and failed. If
24 you've got to, you can make a motion for a 2004 exam which
25 -- to which there are very few defenses. Then you're into

1 motion practice. You're into document production. You're
2 into depositions, all of which I'll give you. In my smaller
3 cases I've found -- again, with the benefit of experience --
4 that debtors don't often have the time or resources to
5 engage in that, but that's your call.

6 MS. PERSKIE: Thank you, Your Honor.

7 Do you have any further thoughts you want to share
8 with me before I allow the other parties to be heard?

9 MS. PERSKIE: I do not have any further thoughts
10 to share at the moment.

11 Thank you.

12 THE COURT: All right. Who wants to be heard
13 next?

14 Ms. Silvestro, you're the highest in the capital
15 structure. Do you want to be heard?

16 MS. SILVESTRO: Thank you, Your Honor. I did
17 speak with Ms. Perskie over the last two days regarding the
18 receipt of the check and the budget, and I have suggested to
19 her a few different ways to possibly make some proposal to
20 my client as far as because there's not truly a monthly
21 income since the debtor isn't operating, but coming up with
22 some other different structure as far as as money comes in,
23 maybe a percentage or certain amounts would be paid in
24 different orders.

25 As soon as I get that, I'll certainly pass it onto

1 my client, but I don't know how long my client's going to be
2 patient.

3 THE COURT: Yeah. I understand your client to be
4 secured, but I've forgotten, is this on equipment that's
5 used in the business? Is this like --

6 MS. SILVESTRO: It's a --

7 THE COURT: -- personal property liens?

8 MS. SILVESTRO: Blanket personal property accounts
9 receivable with a total of about a million-four --

10 THE COURT: You got a lien on everything --

11 MS. SILVESTRO: A lien on --

12 THE COURT: -- effectively?

13 MS. SILVESTRO: Yes.

14 THE COURT: Okay. Thanks. I appreciate your
15 patience.

16 MS. SILVESTRO: Thank you.

17 THE COURT: Who wants to be heard next? Anybody?
18 Mr. Kass, I need you to come up.

19 MR. KASS: Sure.

20 THE COURT: Help me as much as you can, please.

21 MR. KASS: Yes, Your Honor. The City is happy to
22 cooperate. I'm a little surprised at counsel's
23 disappointment since we haven't heard from them since the
24 last status conference. I don't know where her
25 discouragement arose. I'll be happy to talk with her after

1 this and -- and see if we can work something out.

2 The City is interested in having the jobs have not
3 been completed to be completed. The surety is here. There
4 have been some conversations, I understand, between my
5 litigation colleagues prior to the bankruptcy about that
6 possibility. We would be happy if the debtor were to work
7 with us cooperatively to see if we can work something out so
8 that the surety would be in a position to go forward and be
9 protected and be paid appropriately.

10 As far as what the debtor claims to be owed, the
11 debtor commenced litigation pre-petition. Obviously, we're
12 -- we responded in that forum. This is the debtor's
13 litigation. Whether it's subject to the automatic stay is,
14 you know, not before the Court at this time.

15 So on the other hand, as -- as I said, we're happy
16 to attempt to cooperate, whether it's in terms of trying to
17 figure out the situation, figure out what agencies had been
18 billed for whatever the debtor claims, what counsel claims
19 the City might have, and in terms of whether there's been
20 some red tape that the debtor hasn't counted that we can
21 help address.

22 THE COURT: Mr. Kass, I want to put you on the
23 spot the same way I put the U.S. Attorney on the spot
24 yesterday.

25 If I heard you right a moment ago, you said you're

1 willing to help cut through red tape and the message you're
2 trying to tell me, whether or not Ms. Perskie would wholly
3 agree with it or not is not yet clear, is you're trying to
4 be a voice of reason in this process.

5 Can I enlist you to be the point person for the
6 city agencies on exchanges of information and see if
7 constructive progress on narrowing or eliminating
8 disagreements can be achieved?

9 MR. KASS: Certainly, Your Honor. I would be
10 happy to.

11 THE COURT: All right. Thank you.

12 Mr. Leonard, if you were here before I don't
13 remember it. I would like to get the surety's position.

14 Also, help me with the understanding of any bond
15 or bonds you might issue -- or have issued. Are we talking
16 about completion bonds or something different?

17 MR. LEONARD: Robert Leonard, Your Honor.

18 Yes. We're talking about two performance and
19 payment bond projects which are the Washington Square Park
20 Project and the Bronx Boulevard project. That's out of 15
21 that were listed on the monthly operating report that was
22 filed yesterday by the debtor. Those two projects -- of
23 those two projects, the Bronx Boulevard project is
24 apparently not just substantially completed, but as close to
25 final completion as -- as we can imagine, I believe.

1 Washington Square Park is a bit -- has a little
2 more left to be done, but as I understand it, it is not work
3 to be done by Tucci's own forces as opposed to by
4 subcontractors. As a matter of fact, I have been cautioned
5 that certain of the work has to be done by a licensed
6 nursery contractor which has to be a --

7 THE COURT: Wait. A nurse -- you mean nursery
8 like shrubs?

9 MR. LEONARD: Shrubs, yes. It's --

10 THE COURT: You need a license to --

11 MR. LEONARD: -- Washington Square Park --

12 THE COURT: -- grow shrubs?

13 MR. LEONARD: Apparently so. Yes, Your Honor. In
14 fact, I think that was one of the disputes on the project at
15 one time.

16 THE COURT: Go on, please.

17 MR. LEONARD: So, actually, Liberty has been
18 funding these two projects and -- and especially the
19 Washington Square project for almost three years now, and on
20 Washington Square Park Liberty is net out of pocket at this
21 point for Article 3-A Trust Fund items is approximately
22 \$550,000. The account receivables are -- I'm not quite sure
23 when it says amount here in the operating report exactly
24 what it is, but the number is about \$300,000. So that's not
25 going to reimburse the Article 3-A priority items for which

1 Liberty of course is claiming a priority over the bank.

2 In addition, there's a \$220,000 lawsuit by Kelco
3 (ph) against Tucci and Liberty which I did not see mentioned
4 in the list of litigation. It wasn't in the operating
5 report, but there was a list on a motion that was to be
6 submitted for, I think, joint administration today.

7 In any event, that action is pending in the
8 Supreme Court of New York County. It is, of course, stayed
9 as against Kelco. But -- I'm sorry -- as against the
10 debtor.

11 I had spoken with Flora Edwards (ph), the attorney
12 in that action representing Tucci, the debtor. She has not
13 been retained yet to continue to represent Tucci in relation
14 to that particular lawsuit. The debtor has asserted, I
15 think, about a \$300,000 counterclaim against Kelco in that
16 action, apparently because the city rejected --

17 THE COURT: Excuse me. Is Kelco the owner on the
18 job?

19 MR. KASS: No. I'm sorry. Kelco was a
20 subcontractor --

21 THE COURT: Oh, Kelco's a sub.

22 MR. KASS: -- which has a payment bond claim
23 lawsuit against --

24 THE COURT: Against your client?

25 MR. KASS: -- against Liberty and the debtor in

1 the State Court for --

2 THE COURT: Okay.

3 MR. KASS: -- \$220,000.

4 THE COURT: Do I infer from that correctly that
5 your client has paid some of the subs, but has not paid
6 others, and the others who have not been paid by your client
7 are going after you?

8 MR. KASS: As far as I know just the one, Kelco.
9 We've paid everybody else as far as I'm aware.

10 THE COURT: I see. Okay. I'm -- I'm catching up
11 to you now. And am I right in reading that your desire is
12 that the debtor be able to collect any receivables on the
13 underlying jobs, but also for anything you shelled out to
14 subs you're subrogated to their rights and you have rights
15 against the debtor

16 MR. KASS: Certainly.

17 THE COURT: Yeah. I hear you.

18 If you were I, how would you cut through this knot
19 and move this case forward?

20 MR. KASS: Well, there's one other item that I
21 wanted to mention which is that -- and you were speaking
22 before about technicalities and so forth and red tape. The
23 debtor is still the contractor of record with the city on
24 both of these projects. They have not been terminated for
25 default or otherwise. The debtor will need to decide

1 whether to assume or reject the contracts, depending on a
2 variety of factors.

3 And we are believing that probably the best course
4 at this point would be for it to reject the contract so that
5 it will no longer be the contractor of record and we can
6 have our own -- and I think Liberty is -- Liberty had both
7 an outside consulting firm, surety consulting firm working
8 on this, but also now has its own in-house engineering staff
9 working on this. And for the most part, the work has been
10 done with the exception of a couple of subcontractors' work
11 items. And I believe that that can be administered just as
12 well by the Liberty staff and/or their outside surety
13 consultants as by the debtor at this point.

14 Obviously, we would like to work with the debtor
15 for all of the records and knowledge that they have in
16 relation to the project. And to the extent that they want
17 to pursue all these extra claims against the city, that
18 would be good. I mean, the more money that can be recovered
19 to repay Liberty, the better off we are. And we're not
20 looking to make a profit, obviously. We're just looking to
21 get the --

22 THE COURT: You're trying to cut your losses.

23 MR. KASS: -- loss back.

24 I'm sorry. There was one other --

25 THE COURT: I'm sorry. I interrupted you. I

1 apologize. Continue. You were -- you were talking about
2 things that you thought were -- would be constructive for
3 the future of this case.

4 MR. KASS: Yes. I think the key -- of course, one
5 key is the flow of funds, of course. But Liberty does not
6 have a shortfall of operating capital, so at least for now
7 we will advance the monies for the work to be done. The
8 problem is that as was indicated in the operating report
9 that was just filed, the debtor is -- if you look at the
10 very first three questions: Is the business still
11 operating, no; have you paid all your bills this month, no;
12 have you paid your employees on time, no; have you paid your
13 insurance premiums, no.

14 If you look outside, the weather is terrific.
15 This is the best time of year for there to be workers out
16 there in the park planting trees and bushes, and it's not
17 happening right now. And so we need to have something move
18 forward immediately. I gather that the debtor's decision to
19 accept or reject must be approved by the Court, and I assume
20 that needs to be made on some kind of a motion or perhaps by
21 stipulation.

22 THE COURT: Yes, but your second half was very
23 true. And if this can be done by stip, with a non-object
24 from the people in this room, unless I have some reason to
25 believe that there's somebody who is not in this room, we

1 can do that real quick. And what we can do even quicker is
2 approve a stip that like unties knots and has reservations
3 of rights for parties on everything else.

4 So you were a step ahead of me. I didn't realize
5 the desirability of taking advantage of the good weather and
6 trying to get things buttoned up, but that sounds kind of
7 common sense to me.

8 MR. KASS: Absolutely. If they miss this -- this
9 next month and a half or so, two months then it has to go
10 over to the spring which is not a good situation.

11 THE COURT: It's not a good situation in terms of
12 cash flow for anybody and it's not a good situation in terms
13 of taking advantage of when you can put people to work and
14 get stuff done.

15 MR. KASS: Yeah. If I may, Your Honor, also, we
16 do have an agreement of indemnity from the debtor, Tucci
17 Equipment, under which the surety would have certain power
18 of attorney rights and so forth. But we're always a little
19 reluctant to use that in light of the automatic stay and so
20 on and so forth. But we -- we would like to move this
21 forward in one manner or another.

22 THE COURT: Could a stip modifying the stay to
23 give you the avoidance of doubt be constructed?

24 MR. KASS: Quite possibly.

25 THE COURT: Okay. And would an expedited motion

1 for relief from the stay if you can't reach a stip be
2 helpful if you can't reach the stip?

3 MR. KASS: I did have that in mind and I have seen
4 such motions.

5 THE COURT: Uh-huh. Ms. Perskie, you've risen.
6 And I want to hear your perspective. I've got to tell you
7 guys that what I'm thinking is that a conference to see if
8 agreement can be reached on what Mr. Leonard suggested or
9 some subset of that might be in everybody's interest.

10 Can I ask you to step up if Mr. Leonard's done?
11 Be -- before you go farther, are you done for the time
12 being, Mr. Leonard?

13 MR. LEONARD: Yes, Your Honor.

14 THE COURT: Thank you.

15 Ms. Perskie, your perspective.

16 MS. PERSKIE: Your Honor, my client is quite
17 agreeable. He would be willing to work with Liberty,
18 assuming it wouldn't affect his rights to the lawsuit he has
19 pending against the city regarding Washington Square Park.
20 He has also, I guess, assigned in writing the payment from
21 the Washington Square Park job was assigned --

22 MR. MARTUCCI: All -- all parks.

23 MS. PERSKIE: -- were assigned to Liberty Mutual.

24 THE COURT: All right. Well, it doesn't sound to
25 me like you want to go to war with Mr. Leonard or anybody

1 else, other than preserving your rights right now and it --
2 and avoiding prejudice to any claims you may have against
3 the city. Am I --

4 MS. PERSKIE: Correct.

5 THE COURT: -- correct?

6 MS. PERSKIE: Mr. Martucci would also like an
7 opportunity to be heard if the Court's okay with that.

8 THE COURT: Yeah. I'll allow that.

9 MS. PERSKIE: Okay.

10 THE COURT: Is that Mr. Tucci?

11 MS. PERSKIE: Martucci.

12 THE COURT: Martucci. I'm sorry. Oh, your client
13 is Martucci, but the company is Tucci.

14 MS. PERSKIE: Tucci Equipment. Our client is
15 Tucci Equipment. We were also going to represent Mr.
16 Martucci in his personal bankruptcy, but some information
17 has come to light that we may not be able to do so without a
18 conflict of interest.

19 THE COURT: Yeah. I see that as a potential
20 issue.

21 But I'll -- is there anybody that objects to me
22 letting Mr. Martucci come up to a microphone?

23 Come on up, Mr. Martucci. I -- I do want you to
24 understand that my focus today, though, is on the corporate
25 debtor, Tucci Equipment Rental.

1 MR. MARTUCCI: Yes, sir.

2 THE COURT: Go ahead. Keep the mic close to you
3 so I can hear you well.

4 MR. MARTUCCI: Good morning. Tucci Equipment has
5 been in business for 27 years. In 2009, I decided to work
6 for New York City, the Parks Department. I took on two
7 projects for them and it was in Bronx Boulevard and it was
8 in Washington Square Park.

9 When I started those jobs, the payments weren't
10 paid on time. About a year after that in 2010, I tried --
11 my lawyer, Flora Edwards, tried to contact the city and
12 everybody involved here to try and get everybody together
13 and figure out what to do about getting these parks to pay
14 their payments on time so we wouldn't be in a situation.

15 Time went by, time went by, and now we have
16 Capital One who is owed money. We have Liberty who is owed
17 money. I lost my wife and this is where I'm at. So the
18 problem is when we tried to contact the city, they turn
19 their back on us. I spent 45 minutes with Mr. Deblasio (ph)
20 in his office. He accepted a meeting with me.

21 THE COURT: Who is Deblasio?

22 MR. MARTUCCI: Bill Deblasio.

23 THE COURT: The guy who's the mayoral candidate?

24 MR. MARTUCCI: Yes. He was --

25 THE COURT: What -- what does he have to do with

1 acting for the --

2 MR. MARTUCCI: His --

3 THE COURT: Oh, he's, what, the public advocate
4 now?

5 MR. MARTUCCI: Yeah. I went to the public
6 advocate to try and get help. They got nowhere. The -- it
7 seems to be that the Washington Square Park is a real high-
8 end -- was a real high-end project and they set a budget for
9 8 million and they won't go over it. It cost me 12 million
10 to do the project. So we put claims in with the city. I
11 have about 7 million in claims and we can't get the claims
12 to come to the table. It's been a year and a half now for
13 them to -- to get the claims to have a hearing. We can't
14 even get that to happen. So if -- if we can get the claims
15 paid, all these people would be paid and I wouldn't be here.
16 I may not get my wife back, but I -- I -- you know, this is
17 where I'm at.

18 So that's why I wanted to speak today --

19 THE COURT: Okay.

20 MR. MARTUCCI: -- so I could clarify. And -- but
21 as far as --

22 THE COURT: Okay.

23 MR. MARTUCCI: -- but as far as the jobs, all the
24 jobs are complete, finished. The only thing that's not
25 finished is a punch list for the plants, okay. And the comp

1 -- my subcontractor, Kelco, refuses to go back and finish
2 it. So we have to find a different contractor to do it.
3 And when you find a different contractor, it costs you
4 additional money when the original contractor is supposed to
5 do it for free. So that's where Liberty steps in and
6 they're going to pay.

7 So I hope I clarified things a little better.

8 THE COURT: Okay. Fair enough. You do
9 understand, Mr. Martucci, that I can't decide any facts
10 today that might be disputed by anybody else.

11 MR. MARTUCCI: No.

12 THE COURT: I -- I wanted to let you just speak
13 your -- your peace and your mind.

14 MR. MARTUCCI: But this is the first -- this is
15 the first time that we've gotten everybody together and I
16 think it's a step further, you know.

17 THE COURT: Okay. All right.

18 Has everybody had a chance to be heard on the
19 corporate bankruptcy who wants to be?

20 Okay. Here's what we're going to do, folks. I'm
21 satisfied that at least the lawyers in this case are trying
22 to be helpful and are acting in good faith and share the
23 desire that I have to cut through bureaucratic red tape.

24 I have a dim memory that the last time you were
25 here I invited you to use my conference room behind the

1 court room to try to move the case forward. It's possible
2 that I'm confusing this with another case, but I think it's
3 this one. And I still think that that's a good idea.

4 Mr. Kass, I am grateful for your efforts to be the
5 point person to enable Ms. Perskie and -- and maybe this
6 would also involve Mr. Leonard -- to see whether facts that
7 they need to -- and information they need to move things
8 forward can be accomplished. And whether you call it
9 professional responsibility or courtesy to me or whatever, I
10 still think it's helpful and I'm thankful for it.

11 Mr. Leonard, it sounded to me like you had some
12 constructive ideas for trying to give your client the
13 ability it needs, and if I were in your shoes I might want
14 to fight with someone who is writing out checks to move
15 things forward to see if you can cut through red tape, too.

16 Any stips you guys enter, barring something
17 unforeseen, are likely to be approved by me. Any such stips
18 can and -- and should be drafted with reservations of rights
19 on matters that you can't agree. But it still seems to me
20 that you can move the ball forward in a number of useful
21 areas.

22 Mr. Leonard, it didn't sound to me like you would
23 need to move for relief from the stay because Ms. Perskie
24 might be willing to meet your legitimate needs and concerns
25 without a motion.

1 I would like you guys to sit down and see how, at
2 the very least, we can button up the existing jobs, tee up
3 any matters that would then be right for payment by the
4 underlying owners, whether we can make progress with the
5 city. I -- I'm not so naïve as to think that Mr. Kass's
6 good will is going to solve all the problems with the city
7 or it's going to make all the issues with the city go away,
8 but I want to at least see what we can accomplish.

9 Anybody have any further thoughts you want to
10 share with me before I move to the individual motion (sic)?

11 Mr. Leonard.

12 MR. LEONARD: Robert Leonard.

13 I just wanted to mention that with respect to the
14 Kelco litigation, we are considering the possibility and
15 have discussed this with Tucci's counsel, that it might be
16 removed to the Bankruptcy Court. It's essentially a three-
17 way dispute between -- for now -- among Kelco and Tucci and
18 the city with, of course, the surety footing the bill one
19 way or the other. If Kelco's work is determined to have
20 been unacceptable to the city, then as far as we're
21 concerned we should not be paying for it. On the other
22 hand, if it was acceptable to the city, then we believe the
23 city should be paying for it.

24 So either way --

25 THE COURT: Either way you --

1 MR. LEONARD: -- we should not be --

2 THE COURT: -- consider your client to be the
3 monkey in the middle.

4 MR. LEONARD: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. LEONARD: But right now I guess it's all just
7 under discussion.

8 THE COURT: All right. Everybody's got
9 reservations of rights on that. I appreciate the head's up.

10 All right. Anything else, anybody?

11 Mr. Driscoll, I -- I haven't given you a chance to
12 be heard. I -- I suspect your view might be the same as
13 mine which is that you want the case to succeed, but that
14 there's a limit to what you can say or do at this point. Do
15 you want to be heard?

16 MR. DRISCOLL: Briefly, Your Honor. Thank you for
17 the opportunity.

18 THE COURT: Okay.

19 MR. DRISCOLL: Your Honor, we have reviewed the
20 wage order and we have no objection, but that's pending if
21 -- whether Capital One wants to release that because that --
22 all of that -- the monies that would be paid through its
23 wage motion are fully encumbered by Capital One's secured
24 claims.

25 THE COURT: So -- so it's not the issue that we

1 judges normally deal with on first day motions. And, of
2 course, this is no longer a first day motion. You're not
3 standing in the way, but you're saying that ultimately
4 Capital One has to decide what it wants to do.

5 MR. DRISCOLL: That's -- that's my understanding,
6 Your Honor.

7 THE COURT: Okay.

8 MR. DRISCOLL: We have reviewed this motion and it
9 -- and it does comply with the statutory caps for paying all
10 of the employees, including Mr. Martucci.

11 Going forward, there is the issue of conflict of
12 interest between the Tucci case and Mr. Martucci's personal
13 bankruptcy case. At present, we have -- the U.S. Trustee's
14 Office has not come in and tried to stop the Lewis law firm
15 from representing both entities. Typically, we take the
16 approach that where there is a potential conflict of
17 interest, just to be sure we would ask that one law firm
18 does not represent both the entity and the individual.

19 However, we are aware of the economy's of this
20 case. It is a small case. We do want to exercise our
21 discretion, at the same time as making sure that the Lewis
22 law firm was both disinterested and did not have an adverse
23 interest to either estates. At present that's why we
24 haven't stepped in and asked the Lewis law firm to perhaps
25 seek a change, either step out of the case entirely or step

1 out of one case.

2 At this time we can't make that determination
3 because we don't have enough information. It was -- it came
4 to our attention at the April 23rd -- excuse me -- August
5 23rd 341 hearing in Mr. Martucci's personal case that there
6 was potential loans that Mr. Martucci made to Tucci Rental.
7 Whether those are just merely capital contributions or
8 indeed notes backed by some sort of documentation we don't
9 know yet.

10 We also don't know whether there are any potential
11 Chapter 5 actions between either -- either estates that
12 would render a actual conflict of interest with Mr. Lewis's
13 law firm and Ms. Perskie.

14 So at this time, Your Honor, we can't make that
15 determination. So I apologize that we're this far into the
16 case and the U.S. Trustee hasn't stepped in, but we are
17 doing our due diligence and trying to exercise reasonable
18 discretion in not making a big deal out of something that
19 might not necessarily be a big deal.

20 THE COURT: No. I think that's exactly the kind
21 of answer that satisfies me. I was hoping, and you
22 delivered on my hope, that you would take a balancing
23 approach between making sure that conflicts don't gore
24 anybody's ox, if I can use that expression, and protect the
25 system while at the same time using common sense. I'm very

1 satisfied.

2 I assume you're telling me that you're going to
3 continue to monitor it and that if we move from potential
4 conflict to actual conflict you'll let me know and that's
5 fine with me. So I appreciate that, Mr. Driscoll.

6 Unless there are further thoughts you want to
7 share with me, that's just fine and I -- and let me express
8 my appreciation for your handling it in such a thoughtful
9 way.

10 Thank you.

11 MR. DRISCOLL: Thank you, Your Honor.

12 THE COURT: Okay. All right. Anybody else want
13 to be heard on the -- at this point?

14 I do want to use whatever bully pulpit or muscle I
15 have to ask you guys to get together in my conference room
16 and see what you can do by agreement in the next hour or so.

17 Okay. Thank you, folks.

18 (A chorus of thank-you)

19 MS. PERSKIE: Did you -- did you want to hear his
20 personal bankruptcy --

21 THE COURT: Oh, forgive me, Ms. Perskie. Yes, I
22 do.

23 Could I impose -- anybody who is here solely on
24 the corporate matter is free to go into the conference room
25 now, but maybe it's better for everybody who might care

1 about the individual 11 to also step up at this point and
2 for the others to continue to listen.

3 I have no memory of the personal 11 of Mr.
4 Martucci. Is this the first case conference on it or did I
5 just forget from before?

6 MS. PERSKIE: Your Honor, this is the first case
7 conference on it. It was transferred from another judge to
8 Your Honor. I made a motion yesterday -- or I made an
9 application I should say for joint administration of these
10 two cases. As you can see, there's many of the same people
11 involved in both matters and I believe it would save
12 resources for --

13 THE COURT: Okay.

14 MS. PERSKIE: -- the creditors and the debtor.

15 THE COURT: Have I signed a joint admin order yet?

16 MS. PERSKIE: You have not.

17 THE COURT: Has the time for objections come and
18 gone?

19 MS. PERSKIE: No. It was filed yesterday. I
20 believe it's -- there's still time.

21 THE COURT: Okay. Because joint administration
22 orders are merely administrative and enable me to see the
23 big picture and have no substantive effect at all on most
24 significantly emerging assets, I don't think it's likely
25 that there's going to be an opposition. I'm going to assume

1 that there's going to be no op, but people's rights on that
2 are reserved.

3 MS. PERSKIE: Thank you, Your Honor.

4 THE COURT: Mr. Cometti appeared on behalf of Mr.
5 Martucci's, is it at this point former wife or just
6 estranged wife? What's the procedural context now, Mr.
7 Cometti?

8 MR. COMETTI: Post-divorce (indiscernible). Ex-
9 wife.

10 THE COURT: Okay. The divorce is -- is fully
11 complete?

12 MR. COMETTI: Correct.

13 THE COURT: Okay. Is anybody else appearing in
14 the individual case who hasn't been heard yet?

15 MR. DESSBERG: Yes, Your Honor.

16 THE COURT: Come up, please.

17 MR. DESSBERG: Good morning, Your Honor. Claudio
18 Dessberg representing Valley National Bank.

19 THE COURT: Was that Dessberg, D-E-S --

20 MR. DESSBERG: D-E-S-S -- D-E-S-S-B-E-R-G.

21 THE COURT: Okay. With a G like Gerber at the
22 end.

23 MR. DESSBERG: That is correct.

24 THE COURT: Okay. And you've got Valley what
25 bank?

1 MR. DESSBERG: Valley National Bank.

2 THE COURT: Okay. Okay. And Mr. Leonard?

3 MR. LEONARD: And Robert Leonard of Torre, Lentz,
4 Gamell, Gary & Rittmaster, LLP, attorneys for First National
5 Insurance Company of America, a member of the Liberty Group.
6 We are here because Mr. Martucci signed an agreement of
7 indemnity as an individual guaranteeing the obligations
8 which may arise in relation to the Tucci Equipment surety
9 bonds.

10 THE COURT: Okay. Fair enough.

11 All right. Ms. Perskie, give me an update on the
12 status of this one.

13 MS. PERSKIE: As far as the status of this case
14 goes, we were looking to see if we could make Tucci
15 Equipment profitable and have Mr. Martucci be able to
16 collect a regular salary from Tucci Equipment.

17 In regards to Valley National, I believe they have
18 a lien on 336 Beretto (ph) Street which is the current
19 premises that the debtor in this case and the principal of
20 the debtor in the prior case occupies.

21 We've just recently been provided with an offer
22 for lease of that space and, perhaps, Valley National would
23 be interested in signing off on that. There's some
24 equipment that would need to be moved from that location or
25 auctioned, but we were hoping to come to some kind of

1 agreement --

2 THE COURT: Pause, please, Ms. Perskie.

3 (Pause)

4 THE COURT: Continue, please.

5 MS. PERSKIE: We were hoping to come to some type
6 of agreement with Valley National, perhaps a loan
7 modification, to handle that foreclosure.

8 THE COURT: What communications have you had with
9 Valley National or its counsel?

10 MS. PERSKIE: This would be -- today would be the
11 first time. I was just provided with the lease a couple of
12 days ago and there's been a lot of information to sort
13 through. I've been provided with a lot of the information
14 very recently.

15 THE COURT: All right.

16 MS. PERSKIE: They have not entered an appearance
17 on the docket yet either, so I wasn't aware they were going
18 to be appearing today.

19 THE COURT: Did you know about Mr. Dessberg being
20 available as a resource before today?

21 MS. PERSKIE: I did not.

22 THE COURT: All right. Do other folks want to be
23 heard vis-à-vis the status of Mr. Martucci's personal case?

24 Mr. Dessberg.

25 MR. DESSBERG: Thank you, Your Honor.

1 I just wanted the Court to be aware that there is
2 a pending foreclosure action based on a mortgage loan made
3 to a different entity that's not in bankruptcy called 336
4 Beretto, LLC, also owned by Mr. Martucci. Mr. Martucci was
5 named as a defendant in that action since he personally
6 guaranteed that loan.

7 We will most probably be asking the Court or
8 possibly debtor's counsel, if we can stipulate to this, for
9 a limited relief from the stay in order to proceed with that
10 case limited to going against the property. The procedure
11 under New York's real property actions and proceedings law
12 is that in order to preserve any right to a potential
13 deficiency judgment against guarantors or borrowers in the
14 event that the foreclosure sale does not generate enough
15 asset -- proceeds to satisfy the loan, those people have to
16 be named in the action and they also have to be named in the
17 final judgment.

18 That doesn't mean that we will be proceeding
19 against Mr. Martucci personally. It's an option which
20 arises only in the event that there -- the sale proceeds are
21 not enough to satisfy the debt.

22 THE COURT: Do you have a sense as to the value of
23 the property relative to the debt secured by the property?

24 MR. DESSBERG: Somewhat, Your Honor. The debt is
25 approximately \$400,000. We believe the property is worth

1 more than that. I believe the debtor has listed it as being
2 worth --

3 THE COURT: We have so --

4 MR. DESSBERG: -- a million-six.

5 THE COURT: -- many debtors here, I'm getting
6 confused as to which one we're talking about.

7 MR. DESSBERG: I'm sorry. Not the debtor. 33 --
8 Mr. Martucci -- that's a different issue which I also wanted
9 to bring up to the Court.

10 Mr. Martucci's bankruptcy schedules, his personal
11 bankruptcy schedules list a lot of assets that are not
12 personal assets. They're corporate assets, including at
13 least two out of the three real estate properties. They're
14 not owned by Mr. Martucci. Mr. Martucci owns an interest in
15 a corporation which owns those properties.

16 Same with the bank accounts. All of the bank
17 accounts listed in Mr. Martucci's individual bankruptcy
18 schedules are, in fact, held by various corporate entities
19 in which Mr. Martucci has an interest. The bank, Valley
20 National Bank and it appears several other creditors are
21 also listed as secured creditors when they're not, certainly
22 not Valley. We're unsecured in this case with respect to
23 our claim against Mr. Martucci. He signed a personal
24 guarantee which is unsecured. And I believe the same
25 applies to some of the other --

1 THE COURT: Pause, please --

2 MR. DESSBERG: -- creditors.

3 THE COURT: -- Mr. Dessberg. Were the schedules
4 that you were talking about that listed assets not of Mr.
5 Martucci personally but of corporations in which he had an
6 interest, were they prepared by lawyers?

7 MR. DESSBERG: I believe by Mr. Lewis's firm.
8 Yes.

9 THE COURT: All right. Go on, please.

10 MR. DESSBERG: Now generally speaking, apart from
11 a lot of confusion in the schedules and a lot of
12 inconsistencies, some creditors are listed as both secured
13 and unsecured. The amounts involved are sometimes
14 incorrect.

15 Apart from all those issues which can probably be
16 resolved, I'm not sure where this individual bankruptcy is
17 going. Mr. Martucci does not appear to have any assets
18 apart from some small amount of personal property and his
19 interest in his corporate entities. He lists his income as
20 zero. He claims he's received no income for the past two
21 years. He does -- he claims he has monthly expenses of
22 \$18,000. I'm not sure how this case is going to proceed to
23 a reorganization other than Mr. Martucci wanting his
24 companies to become profitable so he can be paid wages.

25 So potentially we -- we see this as going into a

1 Chapter 7 or possibly be dismissed down the road, but that
2 remains to be seen.

3 THE COURT: All right. Now the matter as to which
4 you're interested in the potential modification of the stay,
5 that is against a corporation as to which Mr. Martucci's a
6 guarantor?

7 MR. DESSBERG: Correct, Your Honor.

8 THE COURT: Uh-huh. All right.

9 And if I heard you right, there's a potential
10 surplus in that property which, if there were a surplus,
11 after your client were paid off then the value of that
12 surplus would flow to the corporate obligor to you --

13 MR. DESSBERG: Correct, Your Honor.

14 THE COURT: -- which would at least, in theory,
15 provide value in the equity in that corporation. Is Mr.
16 Martucci the equity holder or one of many equity holders?

17 MR. DESSBERG: I believe he's the 100 percent
18 owner of 336 Beretto if I'm not mistaken, which is not in
19 bankruptcy.

20 THE COURT: Now that would have two corollaries:
21 One would be that you wouldn't need to go after him on the
22 personal guarantee or to file a claim in the 11 we have here
23 because you were already paid off. The second, of course,
24 would be that there might be some value in the stock which
25 would be of use to the other creditors of Mr. Martucci in

1 this 11, or am I missing something?

2 MR. DESSBERG: Well, if there is a surplus, that
3 would go to 336 Beretto Street, a separate entity which is
4 not in bankruptcy. I suppose that company could be
5 liquidated by Mr. Martucci and whatever asset -- whatever
6 cash remains in the -- in their coffers would go to Mr.
7 Martucci as the 100 percent owner.

8 So, yes. Potentially, years from now that could
9 happen; that there would be some surplus monies that make
10 their way to Mr. Martucci individually.

11 THE COURT: Uh-huh.

12 MR. DESSBERG: Currently, the -- this is in Bronx
13 County. The foreclosure process is taking, I would say, an
14 average of two years or more.

15 THE COURT: And how good are foreclosures in Bronx
16 County in getting top value for the underlying property, or
17 is this something where your client would simply be
18 intending to credit bid and then take the value of the
19 property and just account for the remainder under state law?

20 MR. DESSBERG: That I cannot predict, Your Honor.
21 It all depends on whether there are other interested bidders
22 at the auction, whether the property has values to potential
23 developers or buyers. The bank would bid in its mortgage or
24 a portion of its mortgage at the auction, and the most it
25 could bid in was the amount of the debt, which is

1 approximately 400,000.

2 THE COURT: Uh-huh. Now is this the same or
3 different property than Ms. Perskie was telling me she
4 wanted to have a dialogue with you about?

5 MR. DESSBERG: I don't know.

6 MS. PERSKIE: This is the same property I would
7 like to have a dialogue about. The loan is relatively
8 small, I mean, 400,000. I can't imagine the arrears are
9 terrible and I would imagine if he had the building rented,
10 we could come up with some kind of plan to deal with the
11 arrears and get caught up to date.

12 THE COURT: Uh-huh. All right.

13 MR. DESSBERG: It's certainly --

14 THE COURT: This -- this is one more area where
15 you guys need to talk.

16 Ms. Perskie, it may be that this is the first time
17 you've met Mr. Dessberg. If either of these cases is going
18 to succeed, you're going to have to be proactive in reaching
19 out to the other parties, talking to them and either trying
20 to make deals or fail. But you -- you can't be passive on
21 this stuff.

22 So this is one additional thing for you to put on
23 the agenda of matters to discuss in the conference room.

24 MS. PERSKIE: Thank you, Your Honor.

25 THE COURT: Mr. Cometti, are there domestic

1 support obligations that aren't being satisfied in this
2 case?

3 MR. COMETTI: Yes, Your Honor.

4 THE COURT: How much are they? What's the nature
5 of the --

6 MR. COMETTI: Tens of thousands.

7 THE COURT: Am I -- obligations of this character
8 have both priority and non-dischargeability implications.
9 What's your game plan for dealing with those, Ms. Perskie?

10 MS. PERSKIE: Obviously, those would need to be
11 dealt with first. We have concerns about the amount of
12 alimony. It's -- it's \$8,000 --

13 THE COURT: Concerns of what nature? Are --

14 MS. PERSKIE: -- a month.

15 THE COURT: -- they fixed by a court order?

16 MS. PERSKIE: It was done per separation
17 agreement.

18 MR. COMETTI: Which was incorporated into a
19 divorce decree, Your Honor.

20 THE COURT: Yeah. I'm not an expert on domestic
21 relations law, but I was under the impression that that's
22 often the case.

23 MS. PERSKIE: And --

24 THE COURT: So -- so the separation obligation was
25 converted into an obligation under the divorce decree, Mr.

1 Cometti?

2 MR. COMETTI: That's correct, Your Honor. And
3 there's no pending modification. There's no pend -- there's
4 -- the --

5 THE COURT: Pull the mic closer to you, please.

6 MR. COMETTI: I'm sorry. The divorce was in the
7 State of Connecticut. Right now there has been a multitude
8 of post-judgment filings in connection with the obligations
9 of support and alimony. As far as I'm aware, there's no
10 pending motion for modification.

11 So to the extent that there has been an expression
12 that the alimony is too high, all I can say is too bad.
13 There's an order that says -- that sets it forth. They have
14 not made an application to reduce it. I'm not sure why they
15 would raise that as a topic here because this isn't the
16 proper venue for that -- those type of considerations.

17 THE COURT: Earlier in your remarks you mentioned
18 some kinds of motions that were going on. What were you
19 making --

20 MR. COMETTI: Enforcement, contempt.

21 THE COURT: Oh, in other words, you're on offense
22 and you're asking that the order as it now exists be
23 enforced?

24 MR. COMETTI: Correct. There's been continuing
25 for several years non-compliance.

1 THE COURT: Okay. Does anybody have any further
2 thoughts they want to share with me before I ask that you
3 continue in the conference room?

4 MR. DESSBERG: No, Your Honor.

5 MS. PERSKIE: No, Your Honor.

6 THE COURT: All right. I don't know how many of
7 these issues, especially on the debtor -- individual debtor
8 side can be resolved without judicial intervention, but it's
9 obvious to me that there hasn't been enough talking in this
10 case.

11 See if you can make progress in my conference
12 room, and then I'm going to need to have a follow up
13 conference fairly soon. Get a date agreeable to all of you
14 from Ms. Blum (ph), and I want it in a three-week range.
15 Normally, I trail at least by 30 or 45 days. This case
16 needs more talk, not less. Get a date from Ms. Blum in the
17 three-week range.

18 And I want everybody in the conference room and
19 see what you can resolve.

20 MS. PERSKIE: Thank you, Your Honor.

21 THE COURT: Okay. Thank you.

22 (Whereupon these proceedings were concluded at 11:08
23 a.m.)
24
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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sherri L
Breach

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